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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91169225
Party	Defendant Getty Petroleum Marketing Inc. Getty Petroleum Marketing Inc. 125 Jericho Turnpike Jericho, NY 11753
Correspondence Address	DANIELLE R. MENDELSON PITNEY HARDIN LLP 7 TIMES SQ NEW YORK, NY 10036-6524
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Date	06/07/2006
Attachments	Getty Protective Agmt.pdf (11 pages)(165047 bytes)

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

	X		
CARS JEANS & CASUALS, B.V.,	:		
	:		
Opposer,	:		Opposition No. 91169225
	:		
v.	:		
	:		
GETTY PETROLEUM MARKETING INC.,	:		PROTECTIVE AGREEMENT
	:		UPON STIPULATION
Applicant.	:		
	X		

IN RE APPLICATION OF:

Getty Petroleum Marketing Inc.
SERIAL NOS.: 78/614,903 and 78/614,970
FILE DATE: April 22, 2005
MARK: WE LOVE CARS and WE CARS and Design
PUBLISHED: January 17, 2006 and February 21, 2006
CLASS: 25

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and Section 412 of the Trademark Trial and Appeal Board Manual of Procedure and in accordance with the stipulation of the Parties to this action, and for good cause shown,

IT IS HEREBY AGREED and ORDERED as follows:

1. Certain information that has been or may be sought by discovery requests or otherwise in this proceeding constitutes trade secrets or other confidential commercial, development or research information within the meaning of Fed. R. Civ. P. 26(c)(7).
2. "Confidential Information" refers to any information that is conveyed by any party or non-party (hereinafter "Conveying Party") to another party (hereinafter "Receiving Party") in connection with this proceeding that the Conveying Party claims to be its trade secrets or other confidential commercial, development or research information within the meaning of

Fed. R. Civ. P. 26(c) (7).

3. Information may not be designated “Confidential Information” or “Highly Confidential – Attorneys’ Eyes Only Information” if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this Stipulated Protective Order; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party. No information shall be designated as “Confidential” or “Highly-Confidential – Attorneys’ Eyes Only” unless the designating party has a good faith belief that the information is not generally known, and not readily available to competitors or potential competitors of such party who have no obligation to maintain the confidentiality of the information, and that disclosure to, or use of the information by a competitor or potential competitor could substantially injure the designating party.

4. This Protective Order shall govern all documents, materials, testimony, transcripts, responses to requests for admissions, interrogatory responses, items, and/or other information obtained through discovery in this action (collectively “Information”) that a conveying Party designates as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” pursuant to the terms hereof (“Confidential Information”).

5. Any Conveying Party that produces Information pursuant to discovery in this proceeding and has a reasonable competitive or privacy-based reason for claiming that such Information constitutes confidential and/or proprietary information may designate such

Information as "Confidential Information" or "Highly Confidential – Attorneys' Eyes Only Information." Consistent with the definition of "Confidential Information" set forth in paragraph 2 above, Information may be designated "Highly Confidential – Attorneys' Eyes Only Information" only if it meets the definition of "Confidential Information" in paragraph 2 and relates to: (1) current or future business plans, strategies or potential business plans or strategies not yet publicly disclosed or (2) historical or current proprietary knowledge that has or will provide the Receiving Party with a competitive advantage in the marketplace.

a. For documents, materials, or other written Information, a Party shall designate such Information as Confidential Information by stamping each page or item containing confidential information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only."

b. For testimony, a Party shall designate such Information as Confidential Information on the record. Such Party may require the reporter to label the portion of the transcript containing the information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only." Within 20 days of receiving a transcript that has been designated, in whole or in part, as "Confidential" or "Highly Confidential – Attorneys' Eyes Only," the designating party shall notify all other parties as to which portions of the transcript that party believes should remain so designated.

During said twenty-day period, the entire transcript shall be deemed to contain "Highly Confidential – Attorneys' Eyes Only Information." Absent written notice identifying Information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" twenty-one (21) days after the Information is received by the Receiving Party, the Receiving Party may reveal or disclose the contents of the transcript, except any portions which may have been designated as "Confidential Information" or "Highly Confidential - Attorney's Eyes Information" at the deposition itself.

c. For Information maintained in computer readable or other electronic media such as diskettes covered by this Protective Order, a Party shall designate such Information as Confidential Information by submitting with the Information a written statement that it is

“Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

d. A Party’s inadvertent or unintentional failure to designate Information as “Confidential Information” or “Highly Confidential – Attorneys’ Eyes Only” shall not be deemed a waiver in whole or in part of that Party’s claim of confidentiality, if the disclosing Party takes prompt action after discovering such omission to notify all Parties in writing that such Information constitutes Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information.

6. Information subject to the Attorney Client or Attorney Work Product Privilege (“Privileged Information”) shall be identified in a Privileged Log consistent with the local rules governing this action. A Conveying Party’s inadvertent or unintentional production of Privileged Information shall not be deemed a waiver in whole or in part of that Conveying Party’s claim of privilege, if the Conveying Party takes prompt action after discovering such omission to notify all Parties in writing that such Information is privileged and requests its immediate return.

7. The Parties shall use Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information solely for purposes of this proceeding.

8. The Parties may use Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information in discovery responses, motions, briefs, and other pleadings, may mark Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information as exhibits, and may use Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information in depositions and at the hearing before the Trademark Trial and Appeal Board (the “Board”). Confidential Information and Highly Confidential – Attorneys’ Eyes Only Information filed with the pleadings or as evidence, and any pleadings or memoranda purporting to produce or paraphrase Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information, shall be filed in sealed envelopes, and shall not be available for public inspection without further order of the Board. Except for Board personnel, no such envelopes containing Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information shall be opened without an order from the

Board identifying the person or persons who may have access to the sealed material and specifically identifying which portions of the Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information may be revealed to them.

9. Except as provided in paragraph 8 above, or as otherwise agreed by the Conveying Party, the Parties shall not disclose information marked as “Confidential” to anyone other than a “Qualified Person.” As used in this Protective Order, the term “Qualified Person” refers to (a) any officer, director, or employee of a Party to this action who is required by a Party to work directly on this proceeding; (b) in-house attorneys for a Party or Related Party, and the employees supervised by such attorneys or acting under such attorneys’ instructions, for purposes of assisting in this proceeding; (c) outside attorneys for a Party and the employees supervised by such attorneys, for purposes of assisting in this proceeding; (d) persons who sent or received the Confidential Information in the ordinary course; (e) expert witnesses or consultants employed by a Party or its attorneys of record, for purposes of assisting in this proceeding; and (f) the Board and its designated employees. This Protective Order shall not prohibit any disclosure of Confidential Information as may be required by law to persons other than Qualified Persons, upon reasonable prior written notice (*i.e.*, at least five court days before production) to all other Parties. For purposes of this Agreement, the term “Related Party” shall mean to the parents and subsidiaries of Getty Petroleum Marketing Inc. and any company in which Getty Petroleum Marketing Inc. or its parents and/or subsidiaries (either separately or collectively) own a majority interest.

10. Except as provided in paragraph 8 above, or as otherwise agreed by the producing Party, the Parties shall not disclose information marked as “Confidential – Attorneys’ Eyes Only” to anyone other than the following subset of Qualified Persons: (a) in-house attorneys for a Party or Related Party, and employees supervised by such attorneys or acting under such attorneys’ instructions, for purposes of assisting in this proceeding; (b) outside attorneys for a Party and the employees supervised by such attorneys, for purposes of assisting in this proceeding; (c) persons

who sent or received the Confidential Information in the ordinary course; (d) expert witnesses or consultants employed by a Party or its attorneys of record, for purposes of assisting in this proceeding. This Protective Order shall not prohibit any disclosure of "Highly Confidential – Attorneys' Eyes Only" information that may be required by law to persons other than Qualified Persons, upon reasonable prior written notice (*i.e.*, at least five court days before production) to all other Parties; and (e) the Board and its designated employees.

11. Prior to disclosing Confidential Information or Highly Confidential – Attorneys' Eyes Only Information to any Qualified Person as defined in Paragraph 9(e) and 10(d) above, a Party shall provide a copy of this Protective Order to such Qualified Person and shall obtain such person's written agreement, in the form attached as Exhibit A, to comply with the terms of this Protective Order. No Qualified Person shall: (a) use Confidential Information for any purpose other than in connection with this proceeding or (b) disclose Confidential Information to anyone other than a Qualified Person. No Qualified Person shall disclose any "Highly Confidential – Attorneys Only" information to any one other than a Qualified Person who falls within the limited subset of Qualified Persons identified in Paragraph 10.

12. Any person who transcribes testimony in this proceeding at a deposition shall be required to agree in writing, before transcribing and such testimony all information designated "Confidential " or "Highly Confidential – Attorneys' Eyes Only" shall not be disclosed except as provided in this Order and that copies of any transcript of any such testimony will be retained, in absolute confidence for safekeeping by such person, or shall be delivered to an attorney of record. Such agreement shall be manifested by completion of the undertaking attached hereto as Exhibit A.

13. At the conclusion of this proceeding, whether by judgment, disposition of appeal, or settlement and dismissal, all Confidential Information and Highly Confidential – Attorneys' Eyes Only Information, including any copies, summaries, or descriptions thereof, shall, at the option of the Receiving Party, either be returned to the Conveying Party, or destroyed, with a certificate of

destruction delivered to the Conveying Party within 30 days' of the proceeding's conclusion. The conclusion of this proceeding shall not relieve any person to whom Confidential Information or Highly Confidential – Attorneys' Eyes Only Information has been disclosed from the requirements of this Protective Order.

14. If at any time during the pendency or trial of this action, any Party claims that another Party has unreasonably designated Information as Confidential Information or Highly Confidential – Attorneys' Eyes Only Information, the objecting Party may, after a good faith attempt to resolve the dispute with such other Party, make an appropriate application to the Board, under seal, requesting that specifically identified Information be re-designated or excluded from the provisions of this Protective Order. A party shall not be obligated to challenge the propriety of a Confidential Information or Highly Confidential – Attorneys' Eyes Only Information designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this proceeding disagrees at any stage of these proceedings with such designation, such party shall provide to the producing party three (3) business days prior written notice of its disagreement with the designation. The parties shall first try to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party challenging the designation may request appropriate relief from the Board following the specified three (3) business day period. The burden of proving that information has been properly designated as Confidential Information or Highly Confidential – Attorneys' Eyes Only is on the party making such designation.

15. Notwithstanding any other provision hereof, this Protective Order shall not apply to any Information designated as Confidential Information or Highly Confidential – Attorneys' Eyes Only Information that is or becomes generally available to the public from a source other than unauthorized disclosure by the Parties or their counsel.

16. Nothing in this Protective Order shall be deemed to preclude any Party from obtaining, on an appropriate showing, further or different protection with respect to the

confidentiality of any Information produced in discovery in this action, or other modification of this Order. The entry of this Protective Order shall neither constitute, nor be used as a basis for, a finding that any Party has waived any objections that it may have to the discoverability, use, relevance, authenticity, or admissibility of any Information.

17. This Protective Order shall remain in effect until modified, superseded, or terminated by written consent of all Parties to this proceeding or by further order of the Board. The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

18. Nothing in the provisions of this Protective Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, such additional protection with respect to Confidential Information or Highly Confidential – Attorneys' Eyes Only Information as that party may consider appropriate.

DATED: June 7, 2006

Respectfully submitted,
PITNEY HARDIN LLP

By Cecelia Kehoe Dempsey
Cecelia Kehoe Dempsey

Attorneys for Applicant,
GETTY PETROLEUM MARKETING INC.

DATED: June 7, 2006

Respectfully submitted,
Mason Law, P.L.
Professional Limited Liability Company

By Anne S. Mason
Anne S. Mason, Esq.

Attorneys for Opposer,
CARS JEANS & CASUALS, B.V.

CERTIFICATE OF TRANSMISSION

I hereby certify that, the signed "Protection Agreement Upon Stipulation" was electronically filed through the TEAS system on June 7, 2006.


Laurie Buchanan

BY ORDER OF THE BOARD,
EFFECTIVE

DATED: _____, 2006

_____X	:	
CARS JEANS & CASUALS, B.V.,	:	
	:	
Opposer,	:	Opposition No. 91169225
	:	
v.	:	
	:	
GETTY PETROLEUM MARKETING INC.,	:	CERTIFICATION UNDER
	:	PROTECTIVE ORDER
Applicant.	:	
_____X	:	

Exhibit A